



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 10 2002

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms.

Dayton, OH 45449

Re: Follow up to a Request for Information Pursuant to Section 104 of CERCLA for South Dayton Dump in Moraine, Ohio

Dear Ms.

On, May 3, 2002, the United States Environmental Protection Agency (U.S. EPA) issued an information request to you pursuant to the Federal Superfund law Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as amended, 42 U.S.C. §9604(e). A copy of that information request is enclosed with this letter. The information request was delivered to you by certified mail on May 7, 2002. The information request required certain documents and information be provided within thirty (30) days of your receipt of this letter.

Although the deadline has passed, U.S. EPA still has not received any response to its information request. To assist U.S. EPA in gathering information about contamination at the Site, please provide a complete response to the information request immediately.

If you have not responded to the information request because you are concerned that your responses may contain information that you consider "confidential," please be advised that you cannot withhold information or records upon that basis. Please refer to Enclosure 5 of the original letter to assert a business confidentiality claim.

Continued failure to comply with U.S. EPA's information request, or to adequately justify such failure to respond, may subject you to enforcement action seeking to compel compliance and collect penalties of up to twenty-seven thousand dollars (\$27,500) per day of noncompliance pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. §9604(e)(5). U.S. EPA has the authority to use the information requested herein in an administrative, civil, or criminal action.

US EPA RECORDS CENTER REGION 5



507360

Your response to the information request should be mailed to:

Deena Sheppard-Johnson
Enforcement Specialist
U.S. Environmental Protection Agency
Remedial Enforcement Support Section
77 West Jackson Boulevard SR-6J
Chicago, IL 60604-3590

Please contact Deena Sheppard, Enforcement Specialist, at
(312) 886-7048 if you have any questions regarding this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Thomas C. Marks', written over a horizontal line.

Thomas C. Marks, Chief
Remedial Enforcement Support Section

Enclosure(s)

Information Request Letter of, May 03, 2002



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAY 03 2002

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF

Re: Request for Information Pursuant to Section 104 of CERCLA
for the South Dayton Dump, 1976 Dryden Road (aka) Springboro
Pike, Moraine, Ohio

Dear Sir or Madam:

The U.S. Environmental Protection Agency (U.S. EPA or Agency) asks your help in gathering information and documents about the contamination of the South Dayton Dump Superfund Site in Moraine, Ohio. A Superfund site is a site contaminated with hazardous substances that may present a threat to human health or the environment. Enclosure 1 is a summary of the background of this Site and the remedial or removal actions that the U.S. EPA has taken.

The U.S. EPA believes that you have information which may assist the Agency in its investigation of this Site. Please respond completely and truthfully to the questions in Enclosure 2 of this Information Request within thirty (30) days of the day that you receive this letter. Directions to guide you in preparation of your responses are in Enclosure 3. Definitions of terms used in the questions and in this Information Request are in Enclosure 4.

The Federal Superfund law (the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., commonly referred to as CERCLA or Superfund,) gives U.S. EPA the authority to assess the threat to human health and the environment posed by contaminated sites and to clean up those sites. Under Section 104(e)(2) of CERCLA, 42 U.S.C. §9604 (e)(2), U.S. EPA has information gathering authority that allows the Agency to require persons to furnish information or documents. Enclosure 6 is a summary of this legal authority.

This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. §3501 et seq.

You may consider some of the information that the U.S. EPA is requesting confidential. Under CERCLA you may not withhold information upon that basis, but you may ask U.S. EPA to treat the information as confidential. To request that the Agency treat your information as confidential, you must follow the procedures outlined in Enclosure 5, including the requirement that you support your claim for confidentiality.

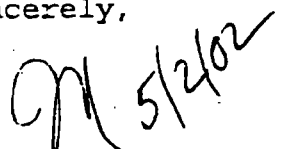
Return your response to U.S. EPA within thirty (30) days. Mail your response to:

Deena Sheppard-Johnson,
Enforcement Specialist
U.S. Environmental Protection Agency
Remedial Enforcement Support Section
77 W. Jackson Boulevard, SR-6J
Chicago, IL 60604

If you have legal questions about this Information Request, please contact Thomas Nash, Assistant Regional Counsel, at (312) 886-0552. Technical questions may be addressed to the Remedial Project Manager, Karen Cibulskis at (312) 886-1843. Any other questions should be addressed to Deena Sheppard-Johnson, Enforcement Specialist, at (312) 886-7048.

What you know about this Site, the waste there, and any generator or transporter who sent waste to this Site is important in helping U.S. EPA reach an understanding of the nature and extent of the contamination and how hazardous that contamination is. Your knowledge is also important in determining the distribution of cleanup costs among those responsible for the Site and the public. Again, we ask that you respond truthfully, completely, and promptly. Thank you for your assistance.

Sincerely,

 5/2/02
Thomas C. Marks, Chief
Remedial Enforcement Support Section

Enclosures: 1. Site History
 2. Questions
 3. Instructions
 4. Definitions
 5. Confidential Business Information
 6. Legal Authority
 7. Potentially Responsible Party List

ENCLOSURE 1

SITE HISTORY

The South Dayton Dump site is an inactive landfill located at 1976 Dryden Road (aka Springboro Pike) in Moraine, Ohio, just southwest of Dayton. The landfill covers approximately 30 acres of a 40 acre parcel of land. The land is owned by Margaret Grillot and Katheryn Boesch. The actual limits of the landfill may extend beyond the currently known boundaries. Landfill operations were also conducted under the name of Moraine Recycling.

The landfill is located 350 feet east of the Great Miami River in a heavily industrial and commercial area. The landfill is separated from the river by a tree-lined manmade levee and a flat open area with a bicycle trail. The open area and the bicycle trail are in the 100-year flood plain and are owned by the Miami Conservancy District. The site also contains a federally designated wetland.

A former auto salvage yard, light industry and an asphalt plant and asphalt storage pile are north of the landfill. East of the landfill are Dryden Road and light industry. South of the landfill is a pallet manufacturing and repair company and a gravel pit filled with water.

The landfill operated between approximately 1941 and 1996. The landfill operator was Alcine Grillot. Materials disposed at the site include drums, metal turnings, fly ash, foundry sand, demolition material, wooden pallets, asphalt, paint, paint thinner and other industrial wastes. The primary disposal practice at the site was open burning followed by landfilling.

Soil borings drilled in 1996 show that the thickness of the landfill ranges from about 4 to 6 feet below ground surface, with one location having as much as 12 feet of fill. The water table ranges from about 12 to 18 feet below ground surface. Groundwater generally flows west-southwest toward the Great Miami River and may also discharge to the water-filled gravel pit south of the site. Soil samples collected in 1996 contained trichloroethene, tetrachloroethene, polynuclear aromatic hydrocarbons, pesticides, polychlorinated biphenyls and inorganic compounds. Groundwater samples contained chloroethane, acetone, 1,1-dichloroethane, 1,2-dichloroethene, toluene, phenol and heptachlor. Sediment samples collected from the water-filled gravel pit and the Great Miami River contained pesticides, polychlorinated biphenyls and mercury.

Because hazardous substances released at the South Dayton Dump site are present in the soil, groundwater and sediment at the site, U.S. EPA is taking response actions under the authority of Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and its amendments.

ENCLOSURE 2

QUESTIONS

1. Identify all persons consulted in the preparation of the answers to these questions.

2. Identify all documents consulted, examined, or referred to in the preparation of the answers to these questions and provide copies of all such documents.

3. If you have reason to believe that there may be persons able to provide a more detailed or complete response to any question or who may be able to provide additional responsive documents, identify such persons.

4. List the EPA Identification Numbers of the Respondent.

5. Identify the acts or omissions of any person, other than your employees, contractors, or agents, that may have caused the release or threat of release of hazardous substances, pollutants, or contaminants and damages resulting therefrom at the South Dayton Dump Site.

6. Identify all persons including respondent's employees, who have knowledge or information about the generation, use, treatment, storage, disposal, or other handling of material at or transportation of materials to the Site.

7. Set forth the dates during which the Respondent engaged in any of the following activities:

a) generation of hazardous materials which were sent to the South Dayton Dump Site;

b) transportation of any material to the South Dayton Dump Site.

8. Identify all persons, including yourself, who may have arranged for disposal or treatment, or arranged for transportation for disposal or treatment, of materials, including, but not limited to, hazardous substances, at the South Dayton Dump Site. In addition, identify the following:

a) The persons with whom you or such other persons made such arrangements;

b) Every date on which such arrangements took place;

c) For each transaction, the nature of the material or hazardous substance, including the chemical content, characteristics, physical state (e.g., solid, liquid), and the process for which the substance was used or the process which generated the substance;

d) The owner of the materials or hazardous substances so accepted or transported;

e) The quantity of the materials or hazardous substances involved (weight or volume) in each transaction and the total quantity for all transactions;

f) All tests, analyses, and analytical results concerning the materials;

g) The persons(s) who selected the South Dayton Dump Site as the place to which the materials or hazardous substances were to be transported;

h) The amount paid in connection with each transaction, the method of payment, and the identity of the person from whom payment was received;

i) Where the person identified in g., above, intended to have such hazardous substances or materials transported and all evidence of this intent;

j) Whether the materials or hazardous substances involved in each transaction were transshipped through, or were stored or held at, any intermediate site prior to final treatment or disposal;

k) What was actually done to the materials or hazardous substances once they were brought to the South Dayton Dump Site;

l) The final disposition of each of the materials or hazardous substances involved in such transactions;

m) The measures taken by you to determine the actual methods, means, and site of treatment or disposal of the material and hazardous substance involved in each transaction.

n) The type and number of containers in which the materials or hazardous substances were contained when they were accepted for transport, and subsequently until they were deposited at the South Dayton Dump Site, and all markings on such containers;

o) The price paid for (i) transport, (ii) disposal, or (iii) both of each material and hazardous substance.

p) All documents containing information responsive to a - o above, or in lieu of identification of all relevant documents, provide copies of all such documents.

q) All persons with knowledge, information, documents responsive to a - p above.

9. Identify all liability insurance policies held by Respondent from 1941 to the present. In identifying such policies, state the name and address of each insurer and of the insured, the amount of coverage under each policy, the commencement and expiration dates for each policy, whether or not the policy contains a "pollution exclusion" clause, and whether the policy covers or excludes sudden, nonsudden, or both types of accidents. In lieu of providing this information, you may submit complete copies of all relevant insurance policies.

10. Provide copies of all income tax returns, including all supporting schedules, sent to the Federal Internal Revenue Service in the last five years.

11. If Respondent is a Corporation, respond to the following requests:

a) Provide a copy of the Articles of Incorporation and By-Laws of the Respondent.

b) Provide Respondent's financial statements for the past five fiscal years, including, but not limited to, those filed with the Internal Revenue Service and Securities and Exchange Commission.

c) Identify all of Respondent's current assets and liabilities and the person(s) who currently own or is responsible for such assets and liabilities.

d) Identify the Parent Corporation and all Subsidiaries of the Respondent.

12. If Respondent is a Partnership, respond to the following requests:

a) Provide copies of the Partnership Agreement;

b) Provide Respondent's financial statements for the past five fiscal years, including, but not limited to, those filed with the Internal Revenue Service and Securities and Exchange Commission;

c) Identify all of Respondent's current assets and liabilities and the person(s) who currently own or is responsible for such assets and liabilities.

d) Identify all subsidiaries of the Respondent.

13. If Respondent is a Trust, respond to the following requests:

a) provide all relevant agreements and documents to support this claim.

b) Provide Respondent's financial statements for the past five fiscal years, including, but not limited to, those filed with the Internal Revenue Service and Securities and Exchange Commission.

c) Identify all of Respondent's current assets and liabilities and the person(s) who currently own or is responsible for such assets and liabilities.

Enclosure 3

INSTRUCTIONS

1. Answer each of the questions in this Information Request separately.
2. Precede each answer with the number of the question to which it corresponds.
3. In answering each question, identify all persons and contributing sources of information.
4. Although the U.S. EPA seeks your cooperation in this investigation, CERCLA requires that you respond fully and truthfully to this Information Request. False, fictitious, or fraudulent statements or misrepresentations may subject you to civil or criminal penalties under federal law. Section 104 of CERCLA, 42 U.S.C. §9604, authorizes the U.S. EPA to pursue penalties for failure to comply with that Section, or for failure to respond adequately to requests for submissions of required information.
5. In answering each question, identify all persons and contributing sources of information.
6. You must supplement your response to U.S. EPA if, after submission of your response, additional information should later become known or available. Should you find at any time after the submission of your response that any portion of the submitted information is false or misrepresents the truth, you must notify U.S. EPA as soon as possible.
7. For any document submitted in response to a question, indicate the number of the question to which it responds.
8. You must respond to each question based upon all information and documents in your possession or control, or in the possession or control of your current or former employees, agents, contractors, or attorneys. Information must be furnished regardless of whether or not it is based on your personal knowledge, and regardless of source.
9. Your response must be accompanied by the following statement, or one that is substantially equivalent:

I certify under a penalty of law that this document and all Enclosures were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted.

9. Your response must be accompanied by the following statement, or one that is substantially equivalent:

I certify under a penalty of law that this document and all Enclosures were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

The individual who prepared the response or the responsible corporate official acting on behalf of the corporation must sign and date the statement, affidavit, or certification. Include the corporate official's full title.

10. If any of the requested documents have been transferred to others or have otherwise been disposed of, identify each document, the person to whom it was transferred, describe the circumstances surrounding the transfer or disposition, and state the date of the transfer or disposition.
11. All requested information must be provided notwithstanding its possible characterization as confidential information or trade secrets. If desired, you may assert a business confidentiality claim by means of the procedures described in Enclosure 5.

Enclosure 4

DEFINITIONS

1. As used in this letter, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa.
2. The term **person** as used herein includes, in the plural as well as the singular, any natural person, firm, contractor, unincorporated association, partnership, corporation, trust or governmental entity, unless the context indicates otherwise.
3. **The Site** referenced in these documents shall mean the South Dayton Dump located in Moraine, Ohio.
4. The term **hazardous substance** shall have the same definition as that contained in Section 101(14) of CERCLA, including any mixtures of such hazardous substances with any other substances, including petroleum products.
5. The term, **pollutant** or **contaminant**, shall have the same definition as that contained in Section 101(33) of CERCLA, and includes any mixtures of such pollutants and contaminants with any other substances.
6. The term **release** shall have the same definition as that contained in Section 101(22) of CERCLA, and means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, pollutant, or contaminant.
7. The term **identify** means, with respect to a natural person, to set forth the person's full name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.
8. The term **identify** means, with respect to a corporation, partnership, businesses trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (e.g., corporation, partnership, etc.), organization, if any, and a brief description of its business.
9. The term **identify** means, with respect to a document, to provide its customary business description, its date, its number, if any (invoice or purchase order number), the identity of the author, addressor, addressee and/or recipient, and the substance or the subject matter.

10. All terms not defined herein will have their ordinary meaning, unless such terms are defined in CERCLA, RCRA, 40 C.F.R., Part 300 or 40 C.F.R., Part 260-280, in which case, the statutory or regulatory definitions will apply.

Enclosure 5

CONFIDENTIAL BUSINESS INFORMATION

You may consider some of the information confidential that the U.S. Environmental Protection Agency (U.S. EPA or Agency) is requesting. You cannot withhold information or records upon that basis. The Regulations at 40 C.F.R. Part 2, Section 200 et seq require that the U.S. EPA affords you the opportunity to substantiate your claim of confidentiality before the Agency makes a final determination on the confidentiality of the information.

You may assert a business confidentiality claim covering part or all of the information requested, in the manner described by 40 C.F.R. 2.203(b). Information covered by such a claim will be disclosed by the U.S. EPA only to the extent and only by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. (See 41 Federal Register 36902 et seq. (September 1, 1976); 43 Federal Register 4000 et seq. (December 18, 1985).) If no such claim accompanies the information when the U.S. EPA receives it, the information may be made available to the public by the Agency without further notice to you. Please read carefully these cited regulations, together with the standards set forth in Section 104(e)(7) of Comprehensive Environmental Response Compensation Liability Act (CERCLA), because, as stated in Section 104(e)(7)(ii), certain categories of information are not properly the subject of a claim of confidential business information.

If you wish the U.S. EPA to treat the information or record as "confidential", you must advise the U.S. EPA of that fact by following the procedures described below, including the requirement for supporting your claim of confidentiality. To assert a claim of confidentiality, you must specify which portions of the information or documents you consider confidential. Please identify the information or document that you consider confidential by page, paragraph, and sentence. You must make a separate assertion of confidentiality for each response and each document that you consider confidential. Submit the portion of the response that you consider confidential in a separate, sealed envelope. Mark the envelope "confidential", and identify the number of the question to which it is the response.

For each assertion of confidentiality, identify:

1. The period of time for which you request that the Agency consider the information confidential, e.g., until a specific date or until the occurrence of a specific event;

2. The measures that you have taken to guard against disclosure of the information to others;
3. The extent to which the information has already been disclosed to others and the precautions that you have taken to ensure that no further disclosure occurs;
4. Whether the U.S. EPA or other federal agency has made pertinent determination on the confidentiality of the information or document. If an agency has made such a determination, enclose a copy of that determination;
5. Whether disclosure of the information or document would be likely to result in substantial harmful effects to your competitive position. If you believe such harm would result from any disclosure, explain the nature of the harmful effects, why the harm should be viewed as substantial, and the causal relationship between disclosure and the harmful effect. Include a description of how a competitor would use the information;
6. Whether you assert that the information is voluntarily submitted as defined by 40 C.F.R. 2.201(I). If you make this assertion, explain how the disclosure would tend to lessen the ability of the U.S. EPA to obtain similar information in the future;
7. Any other information that you deem relevant to a determination of confidentiality.

Please note that pursuant to 40 C.F.R. 2.208(e), the burden of substantiating confidentiality rests with you. The U.S. EPA will give little or no weight to conclusory allegations. If you believe that facts and documents necessary to substantiate confidentiality are themselves confidential, please identify them as such so that the U.S. EPA may maintain their confidentiality pursuant to 40 C.F.R. 2.205(c). If you do not identify this information and documents as "confidential", your comments will be available to the public without further notice to you.

ATTACHMENT 6

DESCRIPTION OF LEGAL AUTHORITY

The Federal Superfund law (the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq. (commonly referred to as CERCLA or Superfund) gives U.S. EPA the authority to, among

other things: 1) assess contaminated sites, 2) determine the threats to human health and the environment posed by each site, and, 3) clean up those sites.

Under Section 104(e)(2) of CERCLA, 42 U.S.C. §9604 (e)(2), U.S. EPA has broad information gathering authority which allows U.S. EPA to require persons to furnish information or documents relating to:

- A. The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility, or transported to a vessel or facility;
- B. The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at/or from a vessel or facility;
- C. The ability to pay the costs of the clean-up.

Compliance with this Information Request is mandatory. Failure to respond fully and truthfully to each question within this Information Request and within the prescribed time frame can result in an enforcement action by U.S. EPA pursuant to Section 104(e)(5) of CERCLA. This Section also authorizes an enforcement action with similar penalties if the recipient of the Request does not respond and does not justify the failure to respond. Other statutory provisions (18 U.S.C. §1001) authorize separate penalties if the responses contain false, fictitious or fraudulent statements. The U.S. EPA has the authority to use the information requested in this Information Request in an administrative, civil or criminal action.

Enclosure 7

South Dayton Dump
Potentially Responsible Party List

Kathryn Boesch
204 Whispering Wind Ct.
Englewood, OH 45322

Katherine Boesch (alternate address)
2440 Rugby Road
Dayton, OH 45406

Margaret Grillot
1570 Cedar Bark Trail
Dayton, OH 45449

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. ~~Also complete~~ item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dayton, OH 45449

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature

X

☐ Agent

D. Is this article being returned from item 1? ☐ Yes
 If not, delivery address below: ☐ No

3. Service

- ☐ Certified Mail ☐ Express Mail
- ☐ Registered ☐ Return Receipt for Merchandise
- ☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)

7001 0320 0005 9028 9969

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1789

**U.S. Postal Service
 CERTIFIED MAIL RECEIPT**
 (Domestic Mail Only; No Insurance Coverage Provided)

7001 0320 0005 9028 9969

Postage \$ 1.03

Certified Fee 2.10

Return Receipt Fee (Endorsement Required)

Restricted Delivery Fee (Endorsement Required)

Total Postage & Fees \$ 4.63

Postmark Here

Sent To

Street, A
 or PO Box

City, State: Dayton, OH 45449

SR-6

PS Form 3811, July 1999

Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Coolidge, Wall, Womsley & Lombard
Attn: Timothy Hoffman
33 West First Street, Suite 600
Dayton, OH 45402
(re: Margaret Grillot)

COMPLETE THIS SECTION ON DELIVERYA. Received by (Please Print Clearly) *Mel King* B. Date of Delivery *12/16/08*C. Signature *Mel King*

X

Mel King

☐ Agent☒ AddresseeD. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7001 0320 0005 9027 3074